

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

) Case No.

ABANTE ROOTER AND)
PLUMBING, INC., individually and on) **CLASS ACTION**
behalf of all others similarly situated,)

Plaintiff,) **COMPLAINT FOR VIOLATIONS**

vs.) **OF:**

FIRST STANDARD FINANCIAL)
COMPANY LLC d/b/a STANDARD)
FINANCING, and DOES 1 through 10,)
inclusive, and each of them,)

Defendant.)

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff, ABANTE ROOTER AND PLUMBING, INC., (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of FIRST STANDARD FINANCIAL
8 COMPANY LLC d/b/a STANDARD FINANCING (“Defendant”), in negligently,
9 knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in
10 violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.*
11 (“TCPA”) and related regulations, specifically the National Do-Not-Call
12 provisions, thereby invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a resident of California, seeks relief on behalf of a Class, which will result in at
16 least one class member belonging to a different state than that of Defendant, a
17 corporation licensed in New York, doing business within and throughout
18 California. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation
19 of the TCPA, which, when aggregated among a proposed class in the thousands,
20 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
21 diversity jurisdiction and the damages threshold under the Class Action Fairness
22 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Northern
24 District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does
25 business within the State of California and Plaintiff resides within the County of
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),

1 is a corporation of the State of California, whose principal place of business is in
2 the county of Alameda and is a “person” as defined by 47 U.S.C. § 153 (39).

3 5. Defendant, FIRST STANDARD FINANCIAL COMPANY LLC
4 d/b/a STANDARD FINANCING (“Defendant”) is a financial services company,
5 and is a “person” as defined by 47 U.S.C. § 153 (39).

6 6. The above named Defendant, and its subsidiaries and agents, are
7 collectively referred to as “Defendants.” The true names and capacities of the
8 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
10 names. Each of the Defendants designated herein as a DOE is legally responsible
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
12 Complaint to reflect the true names and capacities of the DOE Defendants when
13 such identities become known.

14 7. Plaintiff is informed and believes that at all relevant times, each and
15 every Defendant was acting as an agent and/or employee of each of the other
16 Defendants and was acting within the course and scope of said agency and/or
17 employment with the full knowledge and consent of each of the other Defendants.
18 Plaintiff is informed and believes that each of the acts and/or omissions complained
19 of herein was made known to, and ratified by, each of the other Defendants.

20 **FACTUAL ALLEGATIONS**

21 8. Beginning in or around April, 2018, and continuing through July of
22 2018, Defendant contacted Plaintiff on Plaintiff’s cellular telephone numbers
23 ending in -7511, -1080, -5154, and -7447 in an attempt to solicit Plaintiff to
24 purchase Defendant’s services.

25 9. Defendant used an “automatic telephone dialing system” as defined
26 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

27 10. Defendant contacted or attempted to contact Plaintiff from telephone
28 numbers belonging to Defendant, including without limitation: (646) 880-8585,

1 (646) 762-7357, and (347) 594-5609.

2 11. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 12. During all relevant times, Defendant did not possess Plaintiff's "prior
5 express consent" to receive calls using an automatic telephone dialing system or an
6 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
7 227(b)(1)(A).

8 13. Further, three of Plaintiff's cellular telephone numbers, ending in -
9 1080, -7511, and -5154, were added to the National Do-Not-Call Registry on or
10 about November 12, 2014, August 27, 2009 and February 21, 2007, well over
11 thirty (30) days prior to Defendant's initial calls to Plaintiff.

12 14. In addition, Plaintiff requested numerous times that Defendant put its
13 cellular numbers on Defendant's internal Do-Not-Call list. Despite such requests,
14 Defendant continued to call Plaintiff's cellular telephones.

15 15. Defendant placed multiple calls soliciting its business to Plaintiff on
16 its cellular telephones beginning on or about April of 2018 and continuing until on
17 or about July 18, 2018.

18 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
19 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

20 17. Plaintiff received numerous solicitation calls from Defendant within a
21 12-month period.

22 18. Defendant continued to call Plaintiff in an attempt to solicit its
23 services and in violation of the National Do-Not-Call provisions of the TCPA.

24 19. Upon information and belief, and based on Plaintiff's experiences of
25 being called by Defendant after being on the National Do-Not-Call list for several
26 years prior to Defendant's initial call, and at all relevant times, Defendant failed to
27 establish and implement reasonable practices and procedures to effectively prevent
28 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §

227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the three proposed classes (hereafter, jointly, “The Classes”).

21. The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint

23. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who

1 had not granted Defendant prior express consent nor had
2 a prior established business relationship, who received
3 more than one call made by or on behalf of Defendant
4 that promoted Defendant's products or services, within
5 any twelve-month period, within four years prior to the
6 filing of the complaint.

7 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
8 of all persons within the United States who received any solicitation telephone calls
9 from Defendant to said person's cellular telephone made through the use of any
10 automatic telephone dialing system or an artificial or prerecorded voice and such
11 person had not previously not provided their cellular telephone number to
12 Defendant within the four years prior to the filing of this Complaint.

13 25. Plaintiff represents, and is a member of, The ATDS Revocation Class,
14 consisting of all persons within the United States who received any
15 solicitation/telemarketing calls from Defendant to paid person's cellular telephone
16 made through the use of any automatic telephone dialing system or an artificial or
17 prerecorded voice and such person had revoked any prior express consent to receive
18 such calls prior to the calls within the four years prior to the filing of this Complaint.

19 26. Plaintiff represents, and is a member of, The DNC Class, consisting
20 of all persons within the United States registered on the National Do-Not-Call
21 Registry for at least 30 days, who had not granted Defendant prior express consent
22 nor had a prior established business relationship, who received more than one call
23 made by or on behalf of Defendant that promoted Defendant's products or services,
24 within any twelve-month period, within four years prior to the filing of the
25 complaint.

26 27. Defendant, its employees, and agents are excluded from The Classes.
27 Plaintiff does not know the number of members in The Classes, but believes the
28 Classes members number in the thousands, if not more. Thus, this matter should
be certified as a Class Action to assist in the expeditious litigation of the matter.

1 28. The Classes are so numerous that the individual joinder of all of its
2 members is impractical. While the exact number and identities of The Classes
3 members are unknown to Plaintiff at this time and can only be ascertained through
4 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
5 The Classes includes thousands of members. Plaintiff alleges that The Classes
6 members may be ascertained by the records maintained by Defendant.

7 29. Plaintiff and members of The ATDS Class were harmed by the acts of
8 Defendant in at least one of the following ways: Defendant illegally contacted
9 Plaintiff and ATDS Class members via their cellular telephones thereby causing
10 Plaintiff and ATDS Class and ATDS Revocation Class members to incur certain
11 charges or reduced telephone time for which Plaintiff and ATDS Class and ATDS
12 Revocation Class members had previously paid by having to retrieve or administer
13 messages left by Defendant during those illegal calls, and invading the privacy of
14 said Plaintiff and ATDS Class and ATDS Revocation Class members.

15 30. Common questions of fact and law exist as to all members of The
16 ATDS Class which predominate over any questions affecting only individual
17 members of The ATDS Class. These common legal and factual questions, which
18 do not vary between ATDS Class members, and which may be determined without
19 reference to the individual circumstances of any ATDS Class members, include,
20 but are not limited to, the following:

- 21 a. Whether, within the four years prior to the filing of this
22 Complaint, Defendant made any telemarketing/solicitation call
23 (other than a call made for emergency purposes or made with
24 the prior express consent of the called party) to a ATDS Class
25 member using any automatic telephone dialing system or any
26 artificial or prerecorded voice to any telephone number
27 assigned to a cellular telephone service;
- 28 b. Whether Plaintiff and the ATDS Class members were damaged

thereby, and the extent of damages for such violation; and

- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

31. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

32. Common questions of fact and law exist as to all members of The ATDS Revocation Class which predominate over any questions affecting only individual members of The ATDS Revocation Class. These common legal and factual questions, which do not vary between ATDS Revocation Class members, and which may be determined without reference to the individual circumstances of any ATDS Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

1 33. As a person that received numerous telemarketing/solicitation calls
2 from Defendant using an automatic telephone dialing system or an artificial or
3 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
4 is asserting claims that are typical of The ATDS Revocation Class.

5 34. Plaintiff and members of The DNC Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
7 and DNC Class members via their telephones for solicitation purposes, thereby
8 invading the privacy of said Plaintiff and the DNC Class members whose telephone
9 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
10 members were damaged thereby.

11 35. Common questions of fact and law exist as to all members of The
12 DNC Class which predominate over any questions affecting only individual
13 members of The DNC Class. These common legal and factual questions, which do
14 not vary between DNC Class members, and which may be determined without
15 reference to the individual circumstances of any DNC Class members, include, but
16 are not limited to, the following:

- 17 a. Whether, within the four years prior to the filing of this
18 Complaint, Defendant or its agents placed more than one
19 solicitation call to the members of the DNC Class whose
20 telephone numbers were on the National Do-Not-Call Registry
21 and who had not granted prior express consent to Defendant and
22 did not have an established business relationship with
23 Defendant;
- 24 b. Whether Defendant obtained prior express written consent to
25 place solicitation calls to Plaintiff or the DNC Class members'
26 telephones;
- 27 c. Whether Plaintiff and the DNC Class member were damaged
28 thereby, and the extent of damages for such violation; and

1 d. Whether Defendant and its agents should be enjoined from
2 engaging in such conduct in the future.

3 36. As a person that received numerous solicitation calls from Defendant
4 within a 12-month period, who had not granted Defendant prior express consent
5 and did not have an established business relationship with Defendant, Plaintiff is
6 asserting claims that are typical of the DNC Class.

7 37. Plaintiff will fairly and adequately protect the interests of the members
8 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
9 class actions.

10 38. A class action is superior to other available methods of fair and
11 efficient adjudication of this controversy, since individual litigation of the claims
12 of all Classes members is impracticable. Even if every Classes member could
13 afford individual litigation, the court system could not. It would be unduly
14 burdensome to the courts in which individual litigation of numerous issues would
15 proceed. Individualized litigation would also present the potential for varying,
16 inconsistent, or contradictory judgments and would magnify the delay and expense
17 to all parties and to the court system resulting from multiple trials of the same
18 complex factual issues. By contrast, the conduct of this action as a class action
19 presents fewer management difficulties, conserves the resources of the parties and
20 of the court system, and protects the rights of each Classes member.

21 39. The prosecution of separate actions by individual Classes members
22 would create a risk of adjudications with respect to them that would, as a practical
23 matter, be dispositive of the interests of the other Classes members not parties to
24 such adjudications or that would substantially impair or impede the ability of such
25 non-party Class members to protect their interests.

26 40. Defendant has acted or refused to act in respects generally applicable
27 to The Classes, thereby making appropriate final and injunctive relief with regard
28 to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-40.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

43. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

44. Plaintiff and the ATDS Class and the ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

45. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-40.

46. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

47. As a result of Defendant's knowing and/or willful violations of *47*

1 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class and the ATDS Revocation Class
2 members are entitled an award of \$1,500.00 in statutory damages, for each and
3 every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

4 48. Plaintiff and the Class members are also entitled to and seek injunctive
5 relief prohibiting such conduct in the future.

6 **THIRD CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227(c)**

9 **On Behalf of the DNC Class**

10 49. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-40.

12 50. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple negligent violations of the TCPA, including but not limited to each
14 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
15 *47 U.S.C. § 227 (c)(5)*.

16 51. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
17 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

19 52. Plaintiff and the DNC Class members are also entitled to and seek
20 injunctive relief prohibiting such conduct in the future.

21 **FOURTH CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
23 **Act**

24 **47 U.S.C. §227 et seq.**

25 **On Behalf of the DNC Class**

26 53. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-40.

28 54. The foregoing acts and omissions of Defendant constitute numerous

and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

55. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

56. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled to and request treble damages,

as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

JURY TRIAL

57. Pursuant to the Seventh Amendment to the Constitution of the United

1 States of America, Plaintiff is entitled to, and demands, a trial by jury.
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3

4 Respectfully Submitted this 16th Day of August, 2018.

5 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

6 By: /s/ Todd M. Friedman

7 Todd M. Friedman

8 Law Offices of Todd M. Friedman

9 Attorney for Plaintiff
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